

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1231 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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THAKORE KANTIJI RAMTUJI

Versus

SANJAY PRASAD

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Appearance:

MR JB PARDIWALA for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3, 4

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 16th January, 1999 made by the District

Magistrate, Gandhinagar, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner appears to be a 'bootlegger' within the meaning of Section 2 (b) of the Act. As many as 11 offences punishable under the Bombay Prohibition Act have been registered against the petitioner and are pending trial in the concerned Court. Besides, some four individuals, on assurance of anonymity, have given statements in respect of the nefarious activities of the petitioner and its adverse effect on the public order.

4. Mr. Pardiwala, the learned advocate appearing for the petitioner has submitted that the detaining authority has failed to record his subjective satisfaction in respect of the category in which the petitioner should fall, which should invite the order of detention. The petitioner is not made aware as to why he has been detained under the Act. He has further contended that the detaining authority has taken into consideration cases pending trial for a long time i.e., since the year 1996. Even last of the offences was registered against the petitioner on 18th June, 1998, and thereafter, for a long period, no action under the Act has been taken against the petitioner. Even the statements of the witnesses were recorded prior to 7th November, 1998. The proposal was made by the sponsoring authority on 7th November, 1998. Even thereafter for a long time, the impugned order has not been made. This inordinate delay in making the order of detention has snapped the link between the cause of action and the order. The purpose for which the order was required to be made is frustrated and the order is vitiated. He has also contended that even the statements given by the witnesses have not been properly verified, either by the detaining authority or by any of the subordinate officers. The subjective satisfaction based on such statements is, therefore, vitiated. Besides, the activities of the petitioner at the most can be said to be a mere breach of law and order and cannot be said to be prejudicial to the maintenance of public order.

5. Learned AGP Mr. Patel has appeared for the respondents and has contested the petition. He has submitted that after receiving the proposal, the detaining authority had called upon the Divisional Police Officer to verify the statements and therefore the delay. I am afraid, the explanation given by the detaining

authority is not sufficient. It is indisputable that even after the verification recorded by the Divisional Police Officer on 8th November, 1998, for a long time, no action has been taken by the detaining authority. The said period of more than two months has not been explained by the detaining authority. Besides, the verification recorded by the Divisional Police Officer also cannot be said to be adequate. All that he has endorsed is 'verified' on the statements given by the witnesses. This Court, in the matter of Jakirbhai Rahimbhai Nagori v. District Magistrate, Mehsana & Ors. [1996 (1) GLR 80] on similar facts has held that such verification was insufficient and the privilege claimed under Section 9 (2) of the Act was held to be not genuine to the said extent. The detenu was held to have been denied the opportunity of making effective representation. The position of law having thus been settled, in the facts of the present case also, petitioner is required to be held to have been deprived of making an effective representation. It is also true that the detaining authority has not recorded his satisfaction in respect of the category in which the petitioner should fall. The delay in making the order after the materials were placed before the detaining authority also has snapped the live link. The continued detention of the petitioner is, therefore, null and void.

6. Petition is, therefore, allowed. The order dated 16th January, 1999; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*